

REMARKS

In response to the above-identified Office Action (“Action”), Applicants traverse the Examiner’s rejection to the claims and seek reconsideration thereof. Claims 1-18 are pending in the present application. Claims 1-5, 14 and 18 are rejected and claims 6-13 and 15-17 are objected to. In this response, claims 1, 2 and 18 are amended, no claims are cancelled and no claims are added.

I. Claim Amendments

Applicants respectfully submit herewith amendments to claims 1, 2 and 18. In particular, claims 1 and 18 are amended to recite features of the equation of claim 6, namely determining priorities for packets to be transmitted to each of the mobile stations as a function of a service class, a received pilot SINR of a primary beam, an average SINR value of the primary beam, a current time and a maximum tolerable waiting time of a packet. Claim 2 is amended for consistency with claim 1. Accordingly, the amendments are supported by the specification and do not add new matter.

In view of the foregoing, Applicants respectfully request consideration and entry of the amendments to claims 1, 2 and 18.

II. Claim Rejections - 35 U.S.C. §103(a)

A. In the outstanding Action, claims 1, 3, 4, 14 and 18 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,835,847 issued to Gilmore et al. (“Gilmore”) in view of U.S. Patent No. 7,072,692 B1 issued to Katz et al. (“Katz”). Applicants respectfully traverse the rejections as follows.

To establish a *prima facie* case of obviousness, the Examiner must show the cited references, combined, teach or suggest the claimed combination of elements or identify an apparent reason to combine prior art elements in the manner claimed.

In regard to independent claims 1 and 18, Applicants respectfully submit Gilmore and Katz fail to disclose at least the element of “determining priorities for packets to be transmitted to each of the mobile stations as a function of a service class, a received pilot SINR of a primary beam, an average SINR value of the primary beam, a current time and a maximum tolerable waiting time of a packet” as recited in claims 1 and 18. As admitted by the Examiner on page 8 of the Office Action mailed on April 10, 2007 and referenced on page 6 of the instant Action, the prior art fails to disclose calculating priority of each packet transmitted based on the equation of claim 6. Since the elements of a service class, a received pilot SINR of a primary beam, an average SINR value of the primary beam, a current time and a maximum tolerable waiting time of a packet used to determine packet priority in claims 1 and 18 are found in the equation of claim 6, Applicants believe claims 1 and 18 now contain features which are not disclosed by Gilmore and Katz. Since each and every element of claims 1 and 18 is not found within the prior art, a *prima facie* case of obviousness may not be established. Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1 and 18 under 35 U.S.C. §103 in view of Gilmore and Katz.

In regard to claims 3, 4 and 14, these claims depend from claim 1 and incorporate the limitations thereof. Thus, for at least the reasons that claim 1 is not *prima facie* obvious over Gilmore and Katz, claims 3, 4 and 14 are further not obvious over the prior art. Applicants respectfully request reconsideration and withdrawal of the rejection of claims 3, 4 and 14 under 35 U.S.C. §103 in view of Gilmore and Katz.

B. In the outstanding Action, claim 2 is rejected under 35 U.S.C. §103(a) as being unpatentable over Gilmore in view of Katz as applied to claim 1, and further in view of U.S. Patent No. 6,759,978 B2 issued to Lalezari (“Lalezari”). Applicants respectfully traverse the rejections as follows.

In regard to claim 2, claim 2 depends from claim 1 and incorporates the limitations thereof. Thus, for at least the reasons discussed in regard to claim 1, Gilmore and Katz fail to disclose at least the element of “determining priorities for packets to be transmitted to each of the mobile stations as a function of a service class, a received pilot SINR of a primary beam, an average SINR value of the primary beam, a current time and a maximum tolerable waiting time

of a packet” as further found in claim 2. The Examiner has further not pointed to, and Applicants are unable to discern a portion of Lalezari curing the deficiencies of Gilmore and Katz with respect to this element. Thus, for at least the reason that the combination of Gilmore, Katz and Lalezari fails to disclose each and ever element of claim 2, claim 2 is not *prima facie* obvious over Gilmore, Katz and Lalezari. Applicants respectfully request reconsideration and withdrawal of the rejection of claim 2 under 35 U.S.C. §103 in view of Gilmore, Katz and Lalezari.

C. In the outstanding Action, claim 5 is rejected under 35 U.S.C. §103(a) as being unpatentable over Gilmore in view of Katz as applied to claim 1, and further in view of U.S. Patent No. 6,674,750 B1 issued to Castellano (“Castellano”).

In regard to claim 5, claim 5 depends from claim 1 and incorporates the limitations thereof. Thus, for at least the reasons discussed in regard to claim 1, Gilmore and Katz fail to disclose at least the element of “determining priorities for packets to be transmitted to each of the mobile stations as a function of a service class, a received pilot SINR of a primary beam, an average SINR value of the primary beam, a current time and a maximum tolerable waiting time of a packet” as further found in claim 5. The Examiner has further not pointed to, and Applicants are unable to discern a portion of Castellano curing the deficiencies of Gilmore and Katz with respect to this element. Thus, for at least the reason that the combination of Gilmore, Katz and Castellano fails to disclose each and ever element of claim 2, claim 2 is not *prima facie* obvious over Gilmore, Katz and Castellano. Applicants respectfully request reconsideration and withdrawal of the rejection of claim 5 under 35 U.S.C. §103 in view of Gilmore, Katz and Castellano.

III. Allowable Subject Matter

Applicants acknowledge with appreciation the Examiner’s indication that claims 6-13 and 15-17 would be allowable if rewritten to include all the limitations of the base claim and any intervening claims. Claims 6-13 and 15-17 depend from claim 1. For at least the reasons previously discussed, claim 1 is patentable over the prior art. Thus, for at least the reason that claims 6-13 and 15-17 depend from an allowable base claim, these claims are allowable over the references without rewriting them in independent form as suggested by the Examiner.

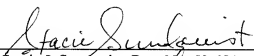
CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely 1-18, are in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

Respectfully submitted,

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on October 18, 2007.


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